

Senate File 446 - Reprinted

SENATE FILE 446
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1148)

(As Amended and Passed by the Senate March 28, 2017)

A BILL FOR

1 An Act relating to asset forfeiture by prohibiting civil
2 asset forfeiture for property valued at less than a minimum
3 amount, raising the standard of proof for asset forfeiture,
4 requiring a proportionality review for property to be
5 forfeited, and requiring law enforcement agencies to retain
6 certain records related to asset forfeiture and including
7 applicability provisions.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 809A.1, Code 2017, is amended by adding
2 the following new subsections:

3 NEW SUBSECTION. 01. "*Convicted*" or "*conviction*" includes
4 a finding of guilt, a plea of guilty, deferred judgment,
5 deferred or suspended sentence, adjudication of delinquency,
6 or circumstances where a person is not charged with a criminal
7 offense that is a serious or aggravated misdemeanor or felony
8 related to the action for forfeiture based in whole or in part
9 on the person's cooperation in providing information regarding
10 the criminal activity of another person.

11 NEW SUBSECTION. 001. "*Instrumentality*" means property
12 otherwise lawful to possess that is used in or intended to be
13 used in a public offense.

14 NEW SUBSECTION. 1A. "*Minimum civil forfeiture amount*" means
15 five thousand dollars.

16 Sec. 2. Section 809A.5, subsection 2, paragraph b, Code
17 2017, is amended to read as follows:

18 b. The owner or interest holder is criminally responsible
19 for the conduct giving rise to its forfeiture, ~~whether or not~~
20 ~~the owner or interest holder is prosecuted or convicted.~~ If
21 the forfeiture is for property valued at less than the minimum
22 civil forfeiture amount, the owner or interest holder must also
23 be convicted of the criminal offense for the conduct giving
24 rise to forfeiture.

25 Sec. 3. Section 809A.8, subsection 1, paragraph a,
26 subparagraph (2), Code 2017, is amended to read as follows:

27 (2) File a judicial forfeiture proceeding within ninety
28 days after notice of pending forfeiture of property upon which
29 a proper claim has been timely filed pursuant to section
30 809A.11, or, if the value of the property is less than the
31 minimum civil forfeiture amount, file a judicial forfeiture
32 proceeding within ninety days after the conclusion of the
33 criminal prosecution.

34 Sec. 4. Section 809A.8, subsection 1, paragraph d,
35 unnumbered paragraph 1, Code 2017, is amended to read as

1 follows:

2 If a petition is timely filed, the prosecuting attorney may
 3 delay filing a judicial forfeiture proceeding for one hundred
 4 eighty days after the notice of pending forfeiture, or, if the
 5 value of the property is less than the minimum civil forfeiture
 6 amount, one hundred eighty days after the conclusion of the
 7 criminal prosecution, and the following procedures shall apply:

8 Sec. 5. Section 809A.12, subsections 6, 7, and 14, Code
 9 2017, are amended to read as follows:

10 6. A defendant ~~convicted in any~~ whose criminal proceeding
 11 results in a conviction is precluded from later denying the
 12 essential allegations of the criminal offense ~~of which the~~
 13 ~~defendant was convicted~~ in any proceeding pursuant to this
 14 section. ~~For the purposes of this section, a conviction~~
 15 ~~results from a verdict or a plea of guilty.~~ A defendant
 16 whose conviction is overturned on appeal may file a motion to
 17 correct, vacate, or modify a judgment of forfeiture under this
 18 subsection.

19 7. In any proceeding under this chapter, if a claim is based
 20 on an exemption provided for in this chapter, ~~the burden of~~
 21 ~~proving the existence of the exemption is on the claimant~~ must
 22 make a prima facie showing of the existence of the exemption.
 23 ~~However, once the claimant comes forward with some evidence~~
 24 ~~supporting the existence of the exemption, the state~~ The
 25 prosecuting attorney ~~must provide some evidence to negate the~~
 26 ~~assertion of the~~ then prove by clear and convincing evidence
 27 that the exemption does not apply. ~~The state's evidence must~~
 28 ~~be substantial, though not necessarily rising to the level of a~~
 29 ~~preponderance of the evidence, and more than a simple assertion~~
 30 ~~of the claimant's interest in the property.~~ The agency or
 31 political subdivision bringing the forfeiture action shall
 32 pay the reasonable attorney fees and costs, as determined by
 33 the court, incurred by a claimant who prevails on a claim for
 34 exemption in a proceeding under this chapter.

35 14. An acquittal or dismissal in a criminal proceeding shall

1 not preclude civil proceedings under this chapter if the value
2 of the property to be forfeited is equal to or exceeds the
3 minimum civil forfeiture amount.

4 Sec. 6. Section 809A.12, Code 2017, is amended by adding the
5 following new subsection:

6 NEW SUBSECTION. 7A. The prosecuting attorney must prove
7 by clear and convincing evidence that the property is property
8 subject to forfeiture.

9 Sec. 7. Section 809A.12, subsection 10, paragraph a, Code
10 2017, is amended to read as follows:

11 a. The If the property to be forfeited is equal to or
12 exceeds the minimum civil forfeiture amount, that the person
13 has engaged in conduct giving rise to forfeiture. If the
14 property to be forfeited is less than the minimum civil
15 forfeiture amount, that the person was convicted for the
16 conduct giving rise to forfeiture.

17 Sec. 8. NEW SECTION. 809A.12A **Limitations on civil**
18 **forfeiture.**

19 1. If the total value of the property seized for forfeiture
20 is less than the minimum civil forfeiture amount, a judicial
21 forfeiture proceeding shall not be brought unless one of the
22 following applies:

23 a. The conduct giving rise to forfeiture resulted in a
24 conviction.

25 b. The property owner is deceased.

26 c. Charges have been filed against the property owner, a
27 warrant was issued for the arrest of the property owner, and
28 either of the following applies:

29 (1) The property owner is outside the state and is unable to
30 be extradited or brought back to the state for prosecution.

31 (2) Law enforcement has made reasonable efforts to locate
32 and arrest the property owner, but the property owner has not
33 been located.

34 d. The property owner has not claimed the property subject
35 to forfeiture or asserted any interest in the property at any

1 time during or after the seizure of the property, and all
2 claims brought under section 809A.11 have been denied.

3 2. The prosecuting attorney has the burden to prove by
4 clear and convincing evidence that the value of the property
5 is or exceeds the minimum civil forfeiture amount in any civil
6 action.

7 Sec. 9. NEW SECTION. **809A.12B Proportionality review.**

8 1. Property shall not be forfeited as an instrumentality
9 under this chapter to the extent that the amount or value of
10 the property is grossly disproportionate to the severity of the
11 offense.

12 2. Contraband and any proceeds obtained from the offense are
13 not subject to proportionality review under this section.

14 Sec. 10. Section 809A.13, subsections 7 and 8, Code 2017,
15 are amended to read as follows:

16 7. The forfeiture hearing shall be held without a jury
17 and within sixty days after service of the complaint unless
18 continued for good cause. The prosecuting attorney shall
19 have the ~~initial~~ burden of proving by clear and convincing
20 evidence that the property is subject to forfeiture ~~by a~~
21 ~~preponderance of the evidence~~. If the state so proves the
22 property is subject to forfeiture, the claimant ~~has the burden~~
23 ~~of proving~~ may assert that the claimant has an interest in the
24 property which is exempt from forfeiture under **this chapter** ~~by~~
25 ~~a preponderance of the evidence~~. If the claimant asserts and
26 makes a prima facie showing of the existence of the exemption,
27 the prosecuting attorney then has the burden of proving by
28 clear and convincing evidence that the exemption does not
29 apply.

30 8. The court shall order the interest in the property
31 returned or conveyed to the claimant if the prosecuting
32 attorney fails to meet the state's burden ~~or the claimant~~
33 ~~establishes by a preponderance of the evidence that the~~
34 ~~claimant has an interest that is exempt from forfeiture.~~ The
35 court shall order all other property forfeited to the state and

1 conduct further proceedings pursuant to [sections 809A.16](#) and
2 [809A.17](#).

3 Sec. 11. Section 809A.14, subsection 7, paragraph d, Code
4 2017, is amended to read as follows:

5 d. In accordance with the findings made at the hearing, the
6 court may amend the order of forfeiture if it determines that
7 any claimant has ~~established by a preponderance of the evidence~~
8 ~~that the claimant has~~ properly petitioned for recognition
9 of exemption under section 809A.11 and that the prosecuting
10 attorney has not shown, by clear and convincing evidence, that
11 the claimant does not have an interest in the property which is
12 exempt under the provisions of [section 809A.5](#).

13 Sec. 12. Section 809A.15, subsection 1, unnumbered
14 paragraph 1, Code 2017, is amended to read as follows:

15 The court shall order the forfeiture of any other property
16 of a person, including a claimant, up to the value of
17 that person's property found by the court to be subject to
18 forfeiture under [this chapter](#), if the prosecuting attorney
19 proves by clear and convincing evidence that any of the
20 following applies to the person's forfeitable property:

21 Sec. 13. Section 809A.16, subsection 2, Code 2017, is
22 amended to read as follows:

23 2. Within one hundred eighty days of the date of a
24 declaration of forfeiture, an owner or interest holder in
25 property declared forfeited pursuant to [subsection 1](#) may
26 petition the court to have the declaration of forfeiture set
27 aside, after making a prima facie showing that the state failed
28 to serve proper notice as provided by [section 809A.13](#). Upon
29 such a showing the court shall allow the state to demonstrate
30 ~~by a preponderance of the~~ clear and convincing evidence that
31 notice was properly served. If the state fails to meet
32 its burden of proof, the court may order the declaration of
33 forfeiture set aside. The state may proceed with judicial
34 proceedings pursuant to [this chapter](#).

35 Sec. 14. NEW SECTION. **809A.18A Recordkeeping.**

1 1. Each law enforcement agency that has custody of any
2 property that is subject to this chapter shall adopt and comply
3 with a written internal control policy that does all of the
4 following:

5 *a.* Provides for keeping detailed records as to the amount
6 of property acquired by the agency and the date property was
7 acquired.

8 *b.* Provides for keeping detailed records of the disposition
9 of the property, which shall include but not be limited to all
10 of the following:

11 (1) The manner in which the property was disposed, the
12 date of disposition, and detailed financial records concerning
13 any property sold. The records shall not identify or enable
14 identification of the individual officer who seized any item of
15 property or the name of any person or entity who received any
16 item of property.

17 (2) An itemized list of the specific expenditures made
18 with amounts that are gained from the sale of the property and
19 that are retained by the agency, including the specific amount
20 expended on each expenditure, except that the policy shall
21 not provide for or permit the identification of any specific
22 expenditure that is made in an ongoing investigation.

23 2. The records kept under the internal control policy
24 shall be open to public inspection during the agency's regular
25 business hours. The policy adopted under this section is a
26 public record open for inspection under chapter 22.

27 Sec. 15. APPLICABILITY. This Act applies to forfeiture
28 proceedings that begin on or after the effective date of this
29 Act.